



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] (WAC 00 186 56160) Office: CALIFORNIA SERVICE CENTER

Date:

JAN 09 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosary
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a nonprofit religious organization. The beneficiary is a native and citizen of India. He was last admitted to the United States on July 6, 1996 as a nonimmigrant visitor. The beneficiary subsequently applied for asylum. The Asylum Office and an Immigration Judge denied his asylum application. The asylum case is now pending before the BIA. The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), in order to employ him as a priest (granthi) in exchange for room and board.

The director denied the petition finding that the beneficiary had not been performing full-time salaried work as a Sikh priest for the two-year period immediately preceding the filing of the petition. The director also determined that the petitioner failed to establish that the beneficiary was qualified to perform as a Sikh priest (granthi).

On appeal, counsel for the petitioner asserts that the beneficiary is a Sikh priest by vocation, and not a lay employee, hence there is no requirement that his experience be in a paid capacity. Counsel states that the beneficiary is a Sikh minister. Counsel also asserts that in the Sikh religion, to become a Minister (granthi), there is no requirement to go through any formal training or to be ordained.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that the alien beneficiary was continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on June 16, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the occupation of a Sikh priest (granthi) since at least June 16, 1998.

In this case, the petitioner claimed that the beneficiary last

entered the United States on or about July 6, 1996 as a nonimmigrant visitor for business (B-1). The petitioner stated that the beneficiary previously worked for the Sikh Cultural Society, Inc. in New York City, New York from June 17, 1998 to September 1999. The petitioner further stated that the beneficiary had been working for the petitioning organization since September 1999 in a non-paid capacity as a Sikh priest (granthi).

The director determined that the beneficiary had not been performing full-time salaried work as a Sikh priest for the two-year period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary is a Sikh priest by vocation, tantamount to a minister, therefore there is no requirement that he had gained his experience in a paid capacity.

The petitioner's argument is not persuasive. The statute requires that the alien have been "carrying on such vocation, professional work, or other work continuously" for the two years prior to filing. See Section 101(a)(27)(C)(iii) of the Act. Neither the statute nor its implementing regulations address the question of voluntary work in satisfying the requirement.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious

life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

The beneficiary's position most squarely falls into the definition of a religious occupation. A Sikh priest (*granthi*) performs a traditional religious function. A Sikh priest performs prayers and plays musical instruments during the recitation of prayers and hymns at Sikh temples (*gurdwaras*). Sikh priests do not take vows and they are not ordained. Accordingly, it must be concluded that the petitioner has failed to overcome the director's decision on this basis.

The director also determined that the petitioner failed to establish that the beneficiary was qualified to perform as a Sikh priest (*granthi*). The record of proceeding contains evidence that the beneficiary completed a two-year training program at the Sant Bhai Mela Singh Ji Technical Institute and Ashram Digiana, Jammu & Kashmir, India. The petitioner overcame the director's objection on this point.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. In accordance with 8 C.F.R. 103.3(a)(1)(v), the appeal will be dismissed.

ORDER: The appeal is dismissed.